

OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 10TH DAY OF NOVEMBER, 2009)

PRESENT

**HON'BLE MR. JUSTICE A.K. YOG, MEMBER-J
HON'BLE MR D. C. LAKHA, MEMBER - A**

**ORIGINAL APPLICATION NO. 08 OF 2009.
(U/S 19, Administrative Tribunal Act, 1985)**

*conveyed
as per order
dated 17.2.2010
by Govt
17.2.10*
Prakash Chadra Sharma
Aged about 42 years
Son of Shiv Dutt Sharma
R/o Mohalla Sumersagar,
Gorakhpur City, Gorakhpur.

.....Applicant

By Advocate: Shri T.S. Pandey

Versus.

1. Union of India through General Manager, North Eastern Railway, Gorakhpur
2. Chief Personnel Officer/General Manager (P), North Eastern Railway, Gorakhpur.
3. Senior Personnel Officer (Traffic), North Eastern Railway, Gorakhpur.
4. Divisional Railway Manager, (P) East Central Railway, Samastipur.

.....Respondents

By Advocate: Shri Dhananjay Awasthi

O R D E R

(Delivered by: Justice A.K. Yog, Member -Judicial)

Heard Shri T.S. Pandey, learned counsel for the Applicant and Shri Dhananjay Awasthi, Learned Counsel for the Respondents.

2. The controversy raised in this O.A. is limited and short one. The applicant was an employee in the Commercial Wing of the Respondents Railway having been found surplus (as per railway policy) he was required to work in the cadre of T.T.E.



3. The Applicant detailed/corroborated Tribunal Order dated 22.11.2002 in O.A. No. 1535/1999 (Annexure-6/Compilation-II). The Tribunal, while disposing of the said O.A. passed following operative order: -

"The respondents are directed not to recover any amount from the applicant on the basis of the aforesaid order and if any amount has been recovered, it may be returned to the applicant within a period of four months from the date of a copy of this order is filed. It shall be open to the respondents to pass a fresh order in accordance with law if they are so advised."

4. Respondents have filed Counter Affidavit. Learned Counsel for the Applicant submits that the controversy is with regard to the subsequent direction of the Tribunal contained in afore quoted Para 9 of the order. The Respondents are directed not to recover any amount from the applicant on the basis of the aforesaid order and if any amount has been recovered, it may be returned to the applicant within a period of four months from the date of a copy of this order is filed before it. It is submitted that respondents did not recover any amount from the applicant after passing of the said order dated 22.11.2002/impugned notification/order dated 15.11.1994.

5. Learned counsel for the Applicant, in support of his contention, referred to Para 4.6 as well as Para 4.9 of the O.A. Interestingly, there is no categorical statement that excess amount has not been returned under direction/order of the Court. On this issue, learned counsel for the Respondents, however, referred to paras-9 and 10 of the Counter Reply (verified by one R.N. Pandey, Senior Personnel Officer/T) Para 10 of the said Counter Reply, reads as: -

"That the contents of the paragraph nos. 4 (viii) & 4 (ix) of the Original Application are denied as stated. It is averred that the orders dated 1-4-2003 and 26-6-2003 were all as per rules and as per instructions of this Hon'ble Tribunal. The excess amount recovered was returned to the applicant and concerning division was advised to give seniority to the applicant from 4..1991. The facts stated in paragraphs under reply are misleading. As has already been averred in earlier paragraphs, the applicant was given provisional promotion as Head Clerk, which was later on withdrawn and after his

qualification in Ticket Checking Cadre new pay scale has been given to him and as per IREM Manual, arrear cannot be given to the applicant on erroneous promotion. The recovery of excess amount has already been cancelled and excess amount has been refunded too the applicant. Rests of the contents stated in paragraph under reply are denied."

On perusal it transpires that Para 10 of the Counter Affidavit has been denied by the applicant vide Para 14 of the Rejoinder Affidavit.

6. A careful reading of Para 10 of the Counter Affidavit shows that Respondents have asserted that excess amount which has been returned to the Applicant, but, at the same time, we find that the applicant was given provisional payment as Head Clerk which was later on withdrawn and applicant was given new pay scale as applicable to Ticket Checker Cadre as per IREM Manual, cannot be given to the Applicant on erroneous promotion.

7. Unfortunately neither Applicant nor Respondents have cared to give particulars/specification in detail to enable this Tribunal to ascertain to find out as to what amount was recovered during which period. The respondents have avoided to give the details of amount allegedly refunded under order of the Tribunal (referred to above).

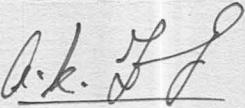
8. In view of the above, this Tribunal has no option but to direct the applicant to file his claim of excess recovery of the amount by giving relevant details and respondents shall, on the other hand, verify the same from the record and return the amount directed under order dated 22.1.2002 within a reasonable period.

9. O.A. is finally disposed of with a direction to the applicant to submit his claim in writing regarding refund of the amount (liable to be refunded under the Tribunal order dated 22.11.2002) within six weeks from to-day. Respondent shall consider and undertake requisite exercise to ascertain/verify the said excess amount recovered from the Applicant (if any due) under order of the Tribunal dated 22.11.2002. If any amount has been returned, the same shall also be

returned by passing order of refund after checking and verity the correctness of the refund within three months of receipt of certified copy of the order. No order as to costs.



Member (A)



Member (J)

/Shashi/